

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 887 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MOTIBEN SOMAJI

Versus

STATE OF GUJARAT

Appearance:

MR AJ PATEL for Petitioners

Mr A.G.Uraizee, AGP, for respondent No.1

SERVED BY DS for Respondent No. 2

CORAM : MR.JUSTICE J.N.BHATT

Date of decision: 20/03/96

ORAL JUDGEMENT

The petitioners have questioned the legality and validity of the show cause notice issued by respondent No.2, Talati-cum-Mantri of village Ghatlodia, Taluka City Ahmedabad dated 27th January 1994 by filing this petition under Article 226/227 of the Constitution of India.

2. The petitioners are the owners and occupants of land bearing survey No.213. The said survey number came to be included in the Town Planning Scheme before 1985. The Scheme came into operation in 1976. The land in question was under final plot No.16 and the land ultimately came to be allotted to the final plot is admeasuring 8348 sq. mtrs.

3. The petitioners had applied for permission for development under section 29 of Gujarat Town Planning and Urban Development Act, 1976 (the Act). On scrutiny of the application for permission to develop submitted by the petitioners, the Ahmedabad Urban Development Authority (AUDA), granted permission to develop the land in question. The permission was thus issued by AUDA by the order dated 1.3.94. According to the case of the petitioners, they are entitled to proceed with the development of the land in question without waiting for permission under other Acts.

4. By the impugned show cause notice dated 27.1.94 issued by the Talati-cum-Mantri of village Ghatlodia in respect of the disputed properties, the petitioners are called upon to pay the premium for conversion into non-agricultural land and stop the construction as the same is without permission under section 65 and 66 of the Bombay Land Revenue Code. It is, therefore, stated in the show cause notice that the disputed land is required to be forfeited to the Government under section 79A of the Bombay Land Revenue Code. Ordinarily, this Court will be at loath to interfere at the show cause notice stage. However, in the present petition, the show cause notice is patently illegal, without jurisdiction and contrary to the settled proposition of law. Therefore, it would be expedient to entertain the petition against the show cause notice.

5. The impugned show cause notice is vulnerable on various counts. Firstly, no provision is pointed out under which the Talati-cum-Mantri of a village is authorised or empowered to issue such a notice to the petitioners. Secondly, the show cause notice states that the disputed land is required to be forfeited under section 79-A of the BLR Code. Section 79-A empowers the Collector for summary eviction of a person unauthorisedly occupying any land. So any person unauthorisedly occupying or in wrongful possession of any land could be summarily evicted by the Collector under section 79A of the Bombay Land Revenue Code. Talati-cum-Mantri is not authorised for summary eviction and forfeiture of land to

the Government. Thirdly, it is not in dispute that the disputed land is forming part and parcel of town planning scheme and is under final plot No.16. There is also no dispute about the fact that permission was granted by AUDA on 19th March, 1994 for development of the disputed land. Therefore, section 117 of Gujarat Town Planning and Urban Development Act, 1976 will be attracted and it is not obligatory for the petitioners to obtain permission under section 65 or 66 of the BLR Code. The provision of Sec.117 of the Act may be examined.

6. Section 117 of the Act reads as under :

"117. Notwithstanding anything contained in any other law for the time being in force --

(a) when permission for development in respect of any land has been obtained under this Act, such development shall not be deemed to be unlawfully undertaken or carried out by reason only of the fact that permission, approval or sanction required under such other law for such development has not been obtained;

(b) when permission for such development has not been obtained under this Act, such development shall not be deemed to be lawfully undertaken or carried out by reason only of the fact that permission, approval or sanction required under such other law for such development has been obtained."

It can be seen from the aforesaid clear provision that as per the provisions of section 117, once the development permission is obtained under section 29 of the Act, then it is not necessary to obtain permission under section 65 and 66 of the BLR Code or under any other such law.

7. Since the petitioners have obtained development permission under section 29 of the Act, the petitioners are not required to obtain permission under section 65 or 66 of the Bombay Land Revenue Code in view of the clear provision contained in section 117 of the Act. This proposition is also very well explained and expounded by this Court in various decisions. In the case of Karimbhai K. Balim & ors. v. State of Gujarat, reported in 1996(1) GLH 200, learned brother Justice A.N.Divecha has taken similar view and I am in complete agreement with this proposition of law expounded so lucidly by my learned brother.

8. In the result, this petition is required to be allowed on the aforesaid grounds and the show cause notice issued by respondent No.2 is quashed and set aside. The petition is allowed accordingly. Rule is made absolute accordingly with no order as to costs.

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